



**GRIC Protecting Our Communities
Addressing Domestic Violence,
Child Violence, and Sexual Violence**



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Phoenix, Arizona

JURY SELECTION

Presented by:

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Distributed by:

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Jury Selection

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“SOFT SCIENCE”

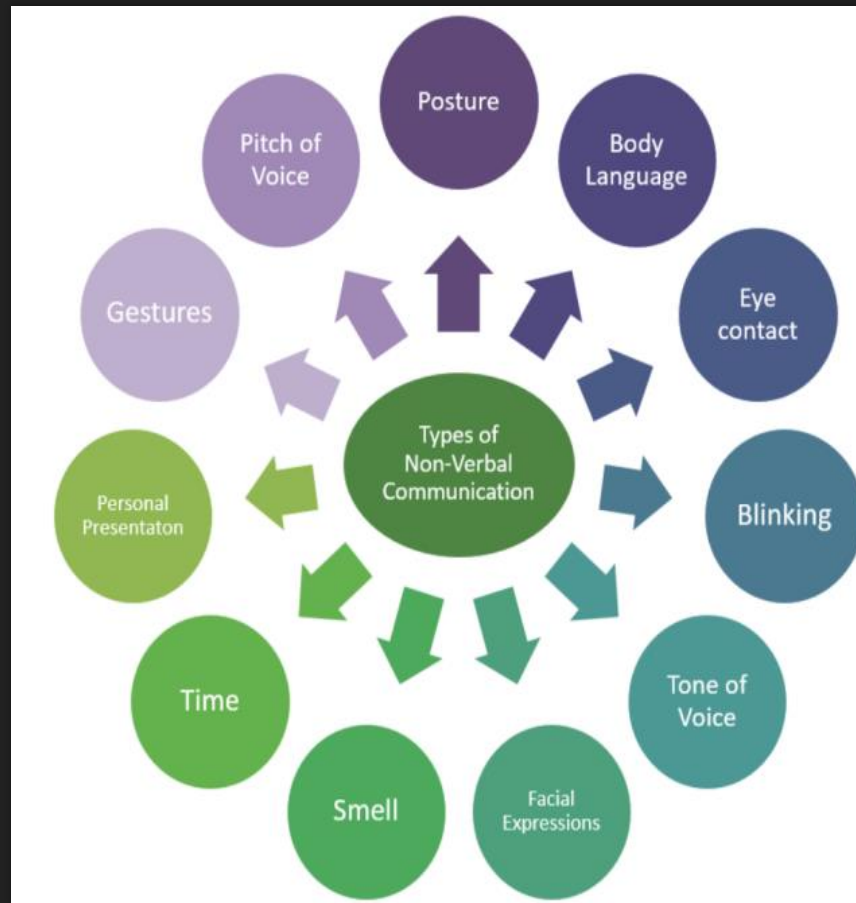
- It starts the moment you enter the courthouse!
- It is not just during questioning but while the potential jurors are entering the courtroom
- STAND UP
- Act Professional and Appear Professional
- Your work space/desk area look professional?

“SOFT SCIENCE”

- Forms from Jury Commissioner
 - How are you going to track the information?
 - Seating Chart?
 - Notepad?
 - Too much info isn't helpful
 - Tracking strikes for Cause/Hardship
 - Prefer to speak in Private
- Body Language/**LISTEN** to their answers and **WATCH** when they answer
- Bring case agent/assistant to help you select a panel

Do You Hear Me?

Verbal & Non-Verbal Communication



“SOFT SCIENCE”

- What type of person am I looking for?
 - Form they filled out/or didn't fill out?
 - Job?
 - Zip Code/Area where crime occurred

"SOFT SCIENCE"

Does my case add up?

How sympathetic is Defendant? Witness? Victim?

Accepted Responsibility? Confessed?

Theft? Burglary? TOMOT?

Violent Crimes?

DNA? Prints?

MY personal favorite

Prior felony/prior criminal history

Lawyers, Students, All other jobs.....

→ Accountants/Engineers

→ Teachers/Social Workers (NO!)

→ Clergy Members

→ Small Business Owners

→ Parents, Military, Retired

→ Medical field

→ Nurses

→ DUI? Rights Restored?

STANDARD VOIR DIRE QUESTIONS FROM THE BENCH

Does your jurisdiction have standard questions?

STANDARD VOIR DIRE QUESTIONS FROM THE BENCH-FOLLOW UP

Regardless of the answers, ask AGAIN:

A law enforcement officers testimony is given the same weight as a non-law enforcement officer....."I like cops better so I give them more weight"

Fair/Impartial..."I hold cops to a higher standard"

V of a crime/Arrested crime/Criminal Justice System....."I was a victim and can't be fair"

STANDARD VOIR DIRE QUESTIONS FROM THE BENCH-FOLLOW UP

"Do you believe the State *MUST* have DNA in order to meet our burden of proof"

"Do you believe the State *MUST* have fingerprints in order to meet our burden of proof"

"Do you believe the State *MUST* have a confession from the defendant in order to meet our burden of proof"

INDIVIDUAL QUESTIONS

- Be polite and remind the panel they can speak in private if they choose
- Establish a dialogue and make them feel comfortable
- Number 4, "You said you have been convicted...." OR
- Number 4, "Good Afternoon. Thank you for your honesty. You told us earlier you have had contact with law enforcement....."
- "Number 6 told us she can't be fair because she strongly dislikes cops. Thank you Number 6 for your honesty. Anyone else feel the same way? It is ok. We just need you to tell us"
- "Number 12 told us she holds law enforcement to a higher standard. But now that we have talked to her, we have learned that is also not allowed. Anyone else feel the same way?"

INDIVIDUAL QUESTIONS

- Prior Jury Service-Find out the verdict and the type of case if not covered
- Make sure you understand their job duties
- Anyone unable to make a decision? Decide now to raise your hand! (Hopefully they laugh)

Why jurors may not share information

- Fear of public speaking
- Socially unacceptable beliefs
- Embarrassing information
- Subconscious beliefs

MUST EXPLORE ISSUES RELATING TO YOUR SPECIFIC CRIME

- Bias/Prejudice
 - Related to the type of case
 - Criminal Justice System
 - YOU as the prosecutor

Your Case

- Kevin is Amy's ex-boyfriend
- Consensual sex 6 months ago
- Kevin has new girlfriend
- Amy has new boyfriend and is 5 months pregnant
- High risk pregnancy – doctor says no sex

[illegible]

On date of offense:

- Amy asks Kevin for ride
- They go to a park
- Amy agrees to get into back seat with Kevin and they kiss
- Kissing progresses to touching Amy's private parts when she did not want him to
- Amy tells Kevin "no" to sex 5-7 times

V says she was afraid

- Kevin takes Amy's clothes off
- Kevin puts his mouth on Amy's vagina & Amy squeezes her legs together to try to stop him
- Amy afraid of Kevin as he's bigger than she is/ Amy freezes
- Kevin asks Amy if she likes it. Amy may have said yes as she was afraid of Kevin
- Kevin then puts his penis in Amy's vagina/ no condom / ejaculated
- Kevin drives Amy home

DNA match to Kevin

- Amy calls her current boyfriend & goes to hospital
- SANE exam done
- Kevin's DNA confirmed
- Kevin repeatedly denies seeing Amy for 6 months
- Kevin repeatedly denies he recently had sex with Amy
- Kevin claims all sex with Amy consensual except maybe last time
- Amy gets Order of Protection against Kevin

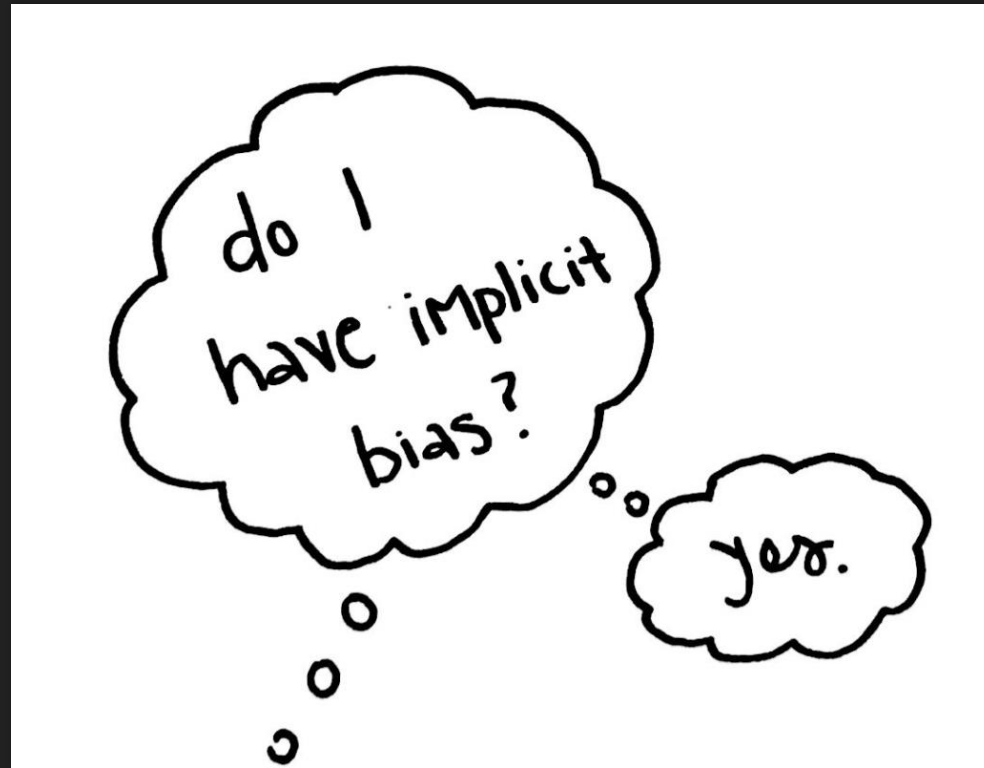
Sexual Assault

GRIC Code 5.801

A person commits the offense of sexual assault if he:

- **Intentionally or knowingly**
- **Engages in sexual intercourse or oral sexual contact**
- **Without consent of the other person**

Implicit Bias: unconsciously-held set of associations about a social group



Common Rape Myths

- Only strangers rape
- Rapists always use weapons & cause physical injury
- Victims behave certain ways
- Women lie about being raped
- Rape victims can assume the risk of being raped

SAMPLE VOIR DIRE



“In this case, you will hear that the victim had been dating the defendant prior to the sexual assault.”

“Without having heard any of the evidence, does it concern you that the victim had a prior relationship with the defendant?”

INDIVIDUAL VOIR DIRE FOR SEX ASSAULT AND DV CASES

- The following concepts need to be explored with your potential jurors:
- Why didn't she stop him? Fight him?
- Why didn't she scream?
- Why did she get in the car?
- Be careful-you can NOT argue your case during voir dire!

INDIVIDUAL VOIR DIRE FOR SEX ASSAULT AND DV CASES

- The following concepts need to be explored:
- Prior victim of sex assault/DV (Should be in the standard from the bench)
- Nature of the case is a sensitive subject
 - Remind them all cases difficult. Try and rehabilitate the juror that says they don't like people that assault people

Sexual Assault

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A person commits the offense of sexual assault if he:

- Intentionally or knowingly
- Engages in sexual intercourse or oral sexual contact
 - Without consent of the other person
- **CAN YOU FOLLOW THE LAW AS WRITTEN?**

Sexual Assault

GRIC Code 5.801

No where does it say you *MUST* scream
No where does it say you *MUST* be a stranger
Can you follow the law as written?

Words Matter

“[W]ith certain crimes . . . a close look shows us how the misuse of language can saddle the successful prosecution of offenders by laying partial blame on victims for the crime itself or by painting an inaccurate picture of rape as a consensual sexual act.”

“The Language of Sex,” by Anne Munch, J.D.

http://www.annemunch.org/Language%20of%20Sex%20Volume_4%20-%20Issue_4.pdf

JURY SELECTION IS AN OPPORTUNITY



- Educate jury on myths of “real rape”
- Eliminate jurors who hold such deep-rooted beliefs that they cannot be FAIR and IMPARTIAL
- Sample voir dire found at:
National District Attorneys Association publication: “Prosecuting Alcohol-Facilitated Sexual Assault”
<http://www.ndaa.org/publications.html>

ANYTHING ELSE WE NEED TO KNOW?

Ladies and Gentleman, we can't expect you to leave everything you know outside the courthouse doors. But can you be fair and impartial in this case?

Closed Circuit TV Testimony



State ex rel. Montgomery v. Kemp
239 Ariz. 332, 371 P.3d 660 (Ariz. App. 2016)

Courthouse Dogs

courthousedogs.org



STRIKES

- Know your jurisdiction
- 12 plus 2-3 alternates if 30 years or more
- 8 plus 1-2 alternates for all other cases
- 6 strikes each
 - So, a panel of 8 plus 1 alternate is 9 jurors needed. Each side gets 6 strikes. You need 21 people to select from in order to get to 9. Do NOT waste your strike on person number 44!

Jury Selection



Batson Challenge: *Batson v. Kentucky*, 476 US 79 (1986)

1. Defendant makes a prima facie case of discrimination by prosecutor based on prosecutors use of preemptory challenges
2. Burden shift to Prosecutor to give a race neutral reason for the strikes

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